

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2389 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT and

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT THROUGH ADDL.SPECIAL LAND ACQU.OFFICER

Versus

HAGI BEGAM W/O ABDULLAMIYA SAIYED MOHMAD UREZI

Appearance:

MS HARSHA DEVANI, for Petitioners

MR KM SHETH, for Respondent No. 1

CORAM : MR.JUSTICE Y.B.BHATT and

MR.JUSTICE C.K.BUCH

Date of decision: 06/03/98

ORAL JUDGEMENT [PER ; Y.B. BHATT, J]

We have heard the ld. counsel for the respective parties. Appeal admitted. Mr. K.M.Sheth, ld. counsel waives service on behalf of the respondent.

At the joint request of the ld. counsel for the parties, this appeal is taken up for final hearing today.

This is an appeal under Sec.54 of the Land Acq.

Act read with Sec.96 of the C.P.Code wherein the State has challenged the judgment and award passed by the Reference Court under Sec.18 of the said Act.

We do not propose to discuss the evidence on record nor to examine the impugned judgment and award of the Reference Court in view of the following facts:-

Ld. counsel for the respective parties agree and state that the Reference Court has referred to and relied upon as a part of the evidence, exh.21 which is the judgment in Land Acq. Case No. 300/88. Similarly, exh.22 is the judgment in Land Acq. Case No. 746/89. In this context, both the counsel have drawn our attention to the common judgment of a Division Bench of this Court in two groups of First Appeals decided on 18.12.1996. Both the counsel agreed that exh.21 relied upon by the Reference Court was taken in appeal, the same being First Appeal No. 5418/95 (which was part of one of the groups dealt with) and exh.22 led to First Appeal No. 5319/95 (which was one of the appeals in the second group dealt with by the aforesaid common judgment). A copy of the aforesaid decision of the Division Bench has been furnished to us, wherein we find that the judgments in the relevant reference under Sec.18 have been quashed and set aside and the cases have been remanded back to the Reference Court for the reasons stated in detail in the aforesaid judgments. Thus, it transpires that exh.21 & 22 which have been relied upon by the Reference Court in the instant case, are at present no longer the final judgments in the said Reference Cases, inasmuch as those cases have been reopened by the order of remand passed by the earlier Division Bench of this Court. Thus, the judgment and award impugned in the present appeal would not be legal and technically sound. In the aforesaid circumstances, we are obliged to quash and set aside the impugned judgment and award in the present case and to remand the same back to the Reference Court, for the reasons recorded in the aforesaid decision of the Division Bench. The Reference Court will, after remand, hear the party once again and decide the reference in accordance with law. This appeal is accordingly disposed of with no order as to costs.

However, since we are remanding the aforesaid Land Reference Case which is now reopened, we cannot lose sight of the fact that the claimant has not received any amount whatsoever under Sec.18, since the appellant State has not deposited any amount in pursuance of the impugned award. Under the circumstances, we are inclined to follow the directions given by the earlier Division Bench in the group of decisions referred to herein above, and for the reasons stated in the said decision, we direct

that the appellant State shall in the present Land Reference Case, compute the total amount of the award together with cost and interest and shall deposit the same in the Reference Court within three months from today. On the deposit being made, 50% of such amount shall be paid to the respondent-original claimant and balance 50% amount shall be invested by way of a cumulative deposit in the name of Nazir of the Court with any nationalised Bank for a period of three years.

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